

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

**Agenda E-19 (Appendix C)**  
**Rules**  
**September 2006**

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**TO: Honorable David F. Levi, Chair  
Standing Committee on Rules of Practice  
and Procedure**

**FROM: Honorable Thomas S. Zilly, Chair  
Advisory Committee on Bankruptcy Rules**

**DATE: May 24, 2006 (Revised June 30, 2006)**

**RE: Report of the Advisory Committee on Bankruptcy Rules**

I. INTRODUCTION

The Advisory Committee on Bankruptcy Rules met on March 8-10, 2006, in Chapel Hill, North Carolina. As a result of that meeting and other actions, the Advisory Committee recommends a series of Action Items to the Standing Committee. . . . Third, we recommend amending Interim Rule 1007, to be effective on October 1, 2006, as set out in Part II.B.4. Fourth, the Committee recommends that the Standing Committee approve the proposed amendments to the Official Forms in Part II.C.2 of the report and submit them to the Judicial Conference for its approval with an effective date of October 1, 2006.

\* \* \* \* \*

Part II.B.4 contains amendments to Bankruptcy Rule 1007 that are being recommended both for inclusion in the rules for publication and for approval as an Interim Rule that can be recommended to the bankruptcy courts for adoption by standing order in the manner that the Interim Rules were adopted prior to October 17, 2005. The 2005 Act amended the Bankruptcy Code to require that consumer debtors receive credit counseling prior to commencing a bankruptcy case. Interim Rule 1007 implements that provision by requiring debtors to file a certificate that they have completed the counseling in the 180 days prior to the commencement of the case. Case law developments have shown that some debtors have completed the counseling but have been unable to obtain a copy of the certificate. The proposed amendment to Interim Rule 1007(b) and (c) addresses the problem by permitting debtors in this position to make a statement that they have completed the counseling and are awaiting receipt of the appropriate certificate. In that event, the debtor has until 15 days after the filing of the petition to file the certificate with the court.

In tandem with this proposed amendment to the Interim Rule 1007, the Advisory Committee recommends a change to Official Form 1, the voluntary petition, for approval by the Standing Committee and for recommendation for adoption by the Judicial Conference, with an effective date of October 1, 2006. The amendment to the Official Form includes a change that implements the amendment to Interim Rule 1007(b)(3) and also includes a series of cautions intended to inform debtors of the consequences of the filing of a bankruptcy petition. Many pro se debtors are unaware of the significant adverse consequences of filing a petition, and the warnings may deter improvident or premature filings. This will reduce the harm to those debtors as well as ease burdens on clerks who often are called upon to respond to inquiries from debtors on these matters.

In addition to the proposed amendment to Official Form 1, the Advisory Committee recommends changes to several other Official Forms also with an effective date of October 1, 2006. These amendments, which are described in Section II.C.1, implement the substantial new statistical reporting requirements in the 2005 Act.

\* \* \* \* \*

## II. ACTION ITEMS

\* \* \* \* \*

### *3. Synopsis of Amendment to Interim Rule 1007 Recommended for Approval Effective October 1, 2006:*

(a) **Interim Rule 1007** is amended to require a debtor to file an Official Form that includes a statement of the debtor's compliance with the prepetition credit counseling obligation of § 109(h) of the Code. The statement will ensure that debtors either will have complied with the obligation or are requesting an exception from the obligation under the standards set out in the Code. **The Advisory Committee recommends that this amendment to the Interim Rules be approved and recommended to the courts for their adoption by standing order effective on October 1, 2006.**

4. *Text of Amendment to Proposed Interim Rule 1007.*

**Interim Rule 1007. Lists, Schedules, and Statements, and Other Documents; Time Limits<sup>1</sup>**

1 \* \* \* \* \*

2 (b) SCHEDULES, STATEMENTS, AND OTHER  
3 DOCUMENTS REQUIRED.

4 \* \* \* \* \*

(3) Unless the United States trustee has determined that the credit counseling requirement of § 109(h) does not apply in the district, an individual debtor must file the ~~certificate and debt repayment plan, if any, required by § 521(b), a certification under § 109(h)(3), or a request for a determination by the court under § 109(h)(4).~~ a statement of compliance with the credit counseling requirement, prepared

\* The amendments are proposed to Interim Rule 1007. Therefore, the underlined additions and the strikeout deletions are to the Interim Rule adopted by the courts on or about October 17, 2005, and not to the existing national rule. This amendment is intended to operate along with the adoption of the amendments to Official Form 1, the voluntary petition.

12       as prescribed by the appropriate Official Form which must  
13       include one of the following:

14               (A) an attached certificate and debt repayment  
15       plan, if any, required by § 521(b);

16               (B) a statement that the debtor has received the  
17       credit counseling briefing required by § 109(h)(1) but does  
18       not have the certificate required by § 521(b);

19               (C) a certification under § 109(h)(3); or

20               (D) a request for a determination by the court  
21       under § 109(h)(4).

22                               \* \* \* \* \*

23               (c) TIME LIMITS. In a voluntary case, the schedules,  
24       and statements, and other documents required by subdivision  
25       (b)(1), (4), (5), and (6) shall be filed with the petition or  
26       within 15 days thereafter, except as otherwise provided in  
27       subdivisions (d), (e), (f), and (h) of this rule. In an  
28       involuntary case, the list in subdivision (a)(2), and the  
29       schedules, statements, and other documents required by

30 subdivision (b)(1) shall be filed by the debtor within 15 days  
31 of the entry of the order for relief. ~~The documents required by~~  
32 ~~subdivision (b)(3) shall be filed with the petition in a~~  
33 ~~voluntary case. The statement required by subdivision (b)(7)~~  
34 ~~shall be filed by the debtor within 45 days after the first date~~  
35 ~~set for the meeting of creditors under § 341 of the Code in a~~  
36 ~~chapter 7 case, and no later than the last payment made by the~~  
37 ~~debtor as required by the plan or the filing of a motion for~~  
38 ~~entry of a discharge under § 1328(b) in a chapter 13 case.~~  
39 ~~The statement required by subdivision (b)(8) shall be filed by~~  
40 ~~the debtor not earlier than the date of the last payment made~~  
41 ~~under the plan or the date of the filing of a motion for entry of~~  
42 ~~a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b). In~~  
43 a voluntary case, the documents required by paragraphs (A),  
44 (C), and (D) of subdivision (b)(3) shall be filed with the  
45 petition. Unless the court orders otherwise, if the debtor has  
46 filed a statement under subdivision (b)(3)(B), the documents  
47 required by subdivision (b)(3)(A) shall be filed within 15 days

48       of the order for relief. In a chapter 7 case, the debtor shall file  
49       the statement required by subdivision (b)(7) within 45 days  
50       after the first date set for the meeting of creditors under § 341  
51       of the Code, and in a chapter 13 case no later than the date  
52       when the last payment was made by the debtor as required by  
53       the plan or the filing of a motion for a discharge under  
54       § 1328(b). The debtor shall file the statement required by  
55       subdivision (b)(8) no earlier than the date of the last payment  
56       made under the plan or the date of the filing of a motion for  
57       a discharge under §§ 1141(d)(5)(B), 1228(b), or 1328(b) of  
58       the Code. Lists, schedules, statements, and other documents  
59       filed prior to the conversion of a case to another chapter shall  
60       be deemed filed in the converted case unless the court directs  
61       otherwise. Except as provided in § 1116(3), any extension of  
62       time for the filing of the schedules, statements, and other  
63       documents required under this rule may be granted only on  
64       motion for cause shown and on notice to the United States  
65       trustee, ~~and to~~ any committee elected under § 705 or

66 appointed under § 1102 of the Code, trustee, examiner, or  
67 other party as the court may direct. Notice of an extension  
68 shall be given to the United States trustee and to any  
69 committee, trustee, or other party as the court may direct.

#### COMMITTEE NOTE

Subdivision (b)(3) of the rule is amended to require the debtor to file an Official Form relating to the credit counseling requirement provided by the 2005 amendments to § 109. Official Form 1 includes statements that warn the debtor of the consequences of failing to comply with the credit counseling requirement. The rule also provides that the debtor may file a statement that the debtor has received credit counseling but has not yet received a certificate from the credit counseling provider. Subdivision (c) is amended to permit the debtor to file the certificate and debt repayment plan within 15 days after the filing of the petition if a Rule 1007(b)(3)(B) statement is filed.

Other changes are stylistic.

\* \* \* \* \*